

DOCUMENT RESUME

ED 364 946

EA 025 474

AUTHOR Green, Douglas W.
TITLE Copyright Law and Policy Meet the Curriculum:
Teachers' Understanding, Attitudes, and Practices.
PUB DATE 6 Dec 93
NOTE 28p.; Doctoral Seminar paper, Binghamton
University.
PUB TYPE Reports - Research/Technical (143) --
Speeches/Conference Papers (150)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Compliance (Legal); *Copyrights; Elementary
Secondary Education; *Fair Use (Copyrights); Federal
Regulation; Legal Responsibility; *Teacher Attitudes;
Teacher Behavior
IDENTIFIERS *Binghamton City Schools NY

ABSTRACT

This paper presents findings of a study that investigated teachers' attitudes toward current copyright law and school copyright policies. Data were collected from a survey of 140 teachers in Binghamton, New York. A total of 60 teachers responded, a 43 percent response rate. Interviews were also conducted with administrators in eight other school districts. A total of 92 percent of the teachers agreed that it is reasonable to expect that teachers fully understand the law; however, they expressed much misunderstanding. The average percentage of correct responses to the true-false section of the questionnaire was 62 percent. Although most teachers equated breaking the copyright law with stealing, 62 percent said that they routinely broke the copyright law. Seventy-one percent admitted to knowingly breaking the law on some occasions, and most justified their actions by stating it was for the good of the students. Copyright laws regulating computer-software use were most commonly violated. A conclusion is that school-district copyright policies are ineffective without teacher education. (LMI)

* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *

**Copyright Law and Policy Meet the
Curriculum:
Teachers' understanding, attitudes, and practices**

by Douglas W. Green

**Principal: Woodrow Wilson Elementary School
287 Prospect Street
Binghamton, NY 13905**

December 6, 1993

**Prepared for a Doctoral Seminar in Educational Policy
and Planning
at Binghamton University
Norman Kaufman Professor - Facilitator**

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)

✓ This document has been reproduced as
received from the person or organization
originating it.

[] Minor changes have been made to improve
reproduction quality.

• Points of view or opinions stated in this docu-
ment do not necessarily represent official
DERI position or policy.

PERMISSION TO REPRODUCE THIS
MATERIAL HAS BEEN GRANTED BY

D. W. Green

TO THE EDUCATIONAL RESOURCES
INFORMATION CENTER (ERIC)™

BEST COPY AVAILABLE

Table of Contents

Abstract.....	2
Introduction.....	3
Legal precedents.....	4
Description of Questionnaire.....	8
Copyright questionnaire with results.....	10
Is it fair to expect teachers to fully understand the copyright law?.....	12
Copyright Questionnaire Answers - November 1993.....	15
Are school district policies effective?.....	18
Teachers' opinions and practices	21
Summary and some final thoughts	24
Appendix.....	27

Abstract

Most materials used by educators carry copyrights that legally prevent duplication. Certain copyrights may also limit the way instructors use such materials. While teachers as a group tend to be model citizens as far as most laws are concerned, it is a widely held assumption that they routinely break the copyright laws. Teachers who would never think of stealing tangible goods, often use available technology to duplicate everything from written materials to video tapes and computer software. In an attempt to prevent such behavior and to reduce the risk of being sued, many educational institutions have established written copyright policies. This paper presents the results of a survey a sample of 60 public school teachers in Binghamton, New York. The purpose of the survey is to determine how well teachers understand the current law and their own policy, their attitudes toward the law, if they think the law is fair, how well they follow it, and how well they think their colleagues follow it. Finally, the survey asks if they feel that it is important to obey the copyright laws to set a good example for their students. Confidential interviews with administrators in eight other districts, and a study of the research are used to corroborate the findings. The work also includes legal precedents and some thoughts on the possible effects that the reduced abuse of copyrights by educators would have.

The major findings include: 1) With proper education, it is fair to expect educators to fully understand the current copyright laws. 2) School district copyright policies are ineffective unless the district makes a significant effort to educate it's staff. 3) Most teachers equate breaking the copyright law with stealing. 4) Most teachers feel that it is important to obey the copyright law in order to set a good example for their students. 5) It is common for teachers to knowingly break the copyright law. 6) When the teachers break the copyright law, the most common rationale used it that they only do it when it is good for kids.

Introduction

While we expect educators to be law abiding citizens, there is serious concern among the producers of instructional materials and computer software that teachers' practices, on the whole, cost them millions of dollars in lost business each year. Unlike many laws, the copyright law is easy to violate and not easy to monitor. Most schools contain a host of technology that can facilitate illegal copying. When the convenience offered by this technology is combined with a lack of understanding of the law by some and open defiance by others, we have a situation where teachers as a group open themselves to criticism as they set the wrong example for their students. Technology has certainly been on the side of the user. Creators and publishers have become more militant in asserting their rights while courts tend to support them. The image is of the good guy creator and the pirate copier.¹

In this paper I present the legal precedents that have helped educators determine how to interpret the copyright law. I then present the results and analysis of a survey administered to 60 teachers in the Binghamton City School District in order to determine how well they understand the law and to develop a picture of their attitudes and practices. I also attempt to corroborate my findings with information gathered from published research and from confidential interviews with administrators familiar with copyright policy and practice from eight other school districts. I stopped at eight since I had reached a satisfactory level of redundancy in the responses to my questions.²

¹ *Libraries, Users and Copyright: Property Rights and Wrongs*. Bookmark; v50, n2, Win 1992

² This technique was suggested by Jean Schmittau, Associate Professor of Education, Binghamton University, Binghamton, NY.

Legal precedents

The powers assumed by Congress in passing the copyright law stem from the United States Constitution, which states in part: "The Congress shall have Power... to promote the progress of Science and useful Arts, by securing for limited times to Authors and Inventors the exclusive right to their respective writings and discoveries."³ The Copyright Act of 1976 revised earlier laws and became the law of the land after January 1, 1978. This law represents a compromise between the interests of the owners and users.

Case law is sparse in the realm of education and the copyright law. Several cases do stand as landmarks that help define where institutions must draw the line between fair use and copyright infringement. The first case involved the Williams & Wilkins Publishing Company who in 1975 sued the National Institutes of Health Library and the National Library of Medicine for making copies of articles. The United States Court of Claims applied the fair use provisions of the law and found for the libraries.⁴ Since then, libraries have freely made copies of journal articles and exchanged them as part of interlibrary loan procedures.

In the fall of 1977, three educational film companies filed a copyright infringement suit against an educational institution. The plaintiffs were Encyclopedia Britannica Educational Corporation, Learning Corporation of America, and Time-Life Films, Inc. The defendant was the Board of Cooperative Educational Services (BOCES), First Supervisory District, Erie County (Buffalo, New York). The basis of the litigation was illegal duplication of plaintiffs' films by means of off-air videotaping of television broadcasts of those

³ The United States Constitution, Article 1, Section 8.

⁴ *Williams & Wilkins Co. v. United States*, 487 F.2d 1345 (Ct.Cl 1973), aff'd by an equally divided court, 420 U.S. 376 (1975).

films. The copying was done on a massive scale, and until the complaint was filed in federal court, the BOCES made a practice of videotaping television programs from all of the signals received in that area without obtaining permission.

In March of 1983, the BOCES was found guilty, fined a total of \$63,500 in statutory damages, and assessed court costs of \$15,000. During the nearly six years that this case was pending, the BOCES spent almost \$250,000 in legal fees. Since 1983, this case has stood as a landmark and has helped give some definition to the fair use section of the copyright law. This case also served as a warning to school districts and other BOCES who were grateful that they were not the targets of this initial attempt by the publishing industry to force schools into a tighter compliance with the copyright law.

The next major case involving off-air video taping was brought by Universal City Studios against Sony Corp. of America in 1979.⁵ At the heart of this case, which made it all the way to the United States Supreme Court, is the right of any citizen to record programs for viewing at a later time with video recording equipment in their home. This case is often referred to as the Betamax case, and it took place during a time when video recording equipment was still bulky, expensive, and difficult to use. The movie industry, however, was correct in assuming that video tape recorders would soon become common household devices.

The court ruled in favor of the video recording industry to permit off-air recording for personal use in homes. The opinion stated that since the primary reason for recording was to time shift the viewing of the program, there was no damage to the producers of the programs being taped. Following the Betamax

⁵ *Universal City Studios v. Sony Corporation of America*, 480 F. Supp. 429 (C.D. Cal. 1979)

case, there has been a great deal of effort by the industry to pass legislation to further protect their copyright. Although many pieces of legislation have been drafted and debated, none have been passed.⁶

While educators are no different than any other citizen when it comes to home recording off-air, they still must comply with the section of the copyright law that limits the showing of such recordings to ten school days after the broadcast, and they must only use the recording for face-to-face instruction. Whether to allow closed circuit broadcast is a matter that is not answered by the original law or subsequent case law. Many institutions, however, routinely allow it.

Many cases have been brought against corporations, copy shops, universities, and faculty members. In each case publishers have been able to extract favorable settlements, but judicial rulings in these cases have not been definitive making legal precedents virtually nonexistent. This changed in 1991 when a Federal Court ordered Kinko's Graphics, a chain of copy shops, to cease copying excerpts of books and compiling them into course packets sold to Columbia University students. This judgement cost Kinko's \$510,000 plus court costs and attorney's fees.⁷ This landmark case should promote more suits by publishers unless institutions become more careful about their copying practices.

Although court decisions impacting educational practice are rare, copyright cases that pit producers, performers, and copyright holders against each other are more common and may impact instruction at some level. An example of this is a case heard by the United States Supreme Court on

⁶ Williams, Russell B., *Copyrights in the Information Age: Betamax and the Congress*, Association for Education in Journalism and Mass Communication, 1988, ED 295 256.

⁷ *Basic Books, Inc. v. Kinko's Graphics Corp.*, 1991 WL 41671 (89 CIV 2807, S.D.N.Y., Mar, 28, 1991).

November 9, 1993 while my research for this paper was in progress. In *2 Live Crew v. Acuff-Rose Music*, the copyright holder of Roy Orbison's 1964 hit "Oh Pretty Woman" argues that they should be able to ban parodies of its compositions.⁸ At the heart of this question is whether 2 Live Crew's "Big Hairy Woman" breaks the copyright law. If the court rules against 2 Live Crew, other performers who make their living writing parodies stand to suffer. This includes artists such as Mark Russell and The Capitol Steps whose works are often used by educators as light-hearted supplements for current events instruction.

⁸ New York Times, November 10, 1993, p. A22.

Description of Questionnaire

I begin my survey by asking if your district has a copyright policy, if you have read it, and if the district has done a good job educating staff about copyright. I continue to ask if you check to see if material has a copyright prior to duplication, if you think breaking the copyright law is equivalent to stealing, and if it is important to obey the copyright law to set a good example for students. Next I ask if you think teachers routinely break the copyright law and if district copyright policies are effective.

The next part of the survey contains 13 true-false questions that I use to see how well teachers understand the copyright law. I developed these questions by studying the Binghamton City School District's guidelines which were published for all staff along with the copyright policy in November of 1992⁹. In addition to finding out how well my sample understood the law, it was also my intention to use these questions to help educate my own staff and to make the results available to other teachers for this same purpose.

The final three questions on my survey ask if it is reasonable for teachers to fully understand the copyright laws, if the current laws are fair to teachers and copyright holders, and how often you knowingly break the copyright law. I distributed the questionnaire at random to 140 teacher in my district using inter-school mail. A total of 60 surveys were returned. This represents a 43% return rate. I am pleased with this response and feel that the survey results along with my interviews from other districts, review of other research, and my own experience provide enough information to draw valid conclusions.

⁹ Binghamton City School District, Binghamton, NY, Board of Education Policy and Guidelines No. 7141

On the following pages I present my questionnaire along with the results expressed as percents for each question. The detailed results are included on a spreadsheet in the appendix of this paper.

Copyright questionnaire with results - November 1993

I am doing research on the copyright laws and schools for a course at Binghamton University, and I need your help. This questionnaire is voluntary. You may omit your name and teaching assignment. Circle the choice that best fits your opinion or your current understanding of the copyright laws. Make your best guess if you do not know an answer. Place the completed survey in a sealed envelope and return it to me by **November 5th**. Thank you for your time. Doug Green

Name _____ What do you teach? _____

1) Does your school district have a copyright policy?

1) Yes	2) No	3) Not sure
90%	0%	10%

2) If you answered yes to question 1, have you ever read the copyright policy?

1) Yes	2) No
67%	33%

3) If you answered yes to question 1, do you feel the district has done a good job educating teachers about its copyright policy?

1) Yes	2) No	3) Not sure
36%	40%	25%

4) Do you check to see if material is protected by a copyright before you use school equipment to duplicate it?

1) Always	2) Sometimes	3) Never
27%	65%	8%

5) Do you consider breaking the copyright law to be equivalent to stealing?

1) Yes	2) No
56%	44%

6) It is important to obey the copyright law to set an example for your students.

1) Strongly agree	2) Agree	3) No opinion	4) Disagree	5) Strongly disagree
28%	48%	14%	10%	0%

7) Teachers as a group are model citizens as far as most laws are concerned, but they routinely break the copyright laws.

1) Strongly agree	2) Agree	3) No opinion	4) Disagree	5) Strongly disagree
17%	48%	18%	17%	0%

8) Copyright policies adopted by school districts are an effective way to control illegal copying by teachers.

1) Strongly agree	2) Agree	3) No opinion	4) Disagree	5) Strongly disagree
2%	42%	8%	40%	8%

Please turn the page over and complete the other side.

9) Indicate if you believe each of the following statements to be true (T) or false (F).

Correct answers are in bold face.

- a. ☐ It is legal to make copies of a magazine article for use with your class if you lack sufficient time to request permission.
T - 37% **F - 63%**
- b. ☐ It is legal for teachers to purchase a copy of Disney's Beauty and the Beast at a video store to show to their classes.
T - 61% **F - 39%**
- c. ☐ It is legal to record any television program and show it to your class at any time in the future.
T - 15% **F - 85%**
- d. ☐ It is legal to record any program on Public Broadcasting (WSKG) and show it to your class at any time in the future.
T - 33% **F - 67%**
- e. ☐ It is legal to copy articles for your class to take the place of a text book.
T - 17% **F - 83%**
- f. ☐ It is legal for a library to copy an article and send it to another library.
T - 49% **F - 51%**
- g. ☐ It is legal to copy a piece of music in an emergency for a performance.
T - 26% **F - 74%**
- h. ☐ If you intend to make multiple copies of excerpts of a work for a class, you may not generally copy more than 10% of the work.
T - 73% **F - 27%**
- i. ☐ It is legal to use an office copier to make copies of a commercial ditto master.
T - 65% **F - 35%**
- j. ☐ It is legal to make a copy of a computer program to keep as a back up.
T - 52% **F - 48%**
- k. ☐ If you wish to use a program on a network so many computers can use it at the same time, you must have a network license.
T - 93% **F - 7%**
- l. ☐ Programs recorded off-air may be used for entertainment or reward in school.
T - 27% **F - 73%**
- m. ☐ If a person is ordered to make illegal copies by a higher authority, they are still guilty of breaking the copyright law.
T - 100% **F - 0%**

10) It is reasonable for teachers to fully understand the current copyright laws.

1) Strongly agree	2) Agree	3) No opinion	4) Disagree	5) Strongly disagree
22%	69%	3%	5%	0%

11) The current copyright laws are fair to both teachers and copyright holders.

1) Strongly agree	2) Agree	3) No opinion	4) Disagree	5) Strongly disagree
9%	42%		23%	21%
				5%

12) How often do you knowingly break the copyright law?

1) Often	2) Only when its good for kids	3) Never
11%	53%	36%

Thanks again for your help!

Is it fair to expect teachers to fully understand the copyright law?

While the details of the copyright law may seem complicated, I believe that it is reasonable for an educator to understand the fundamental concepts well enough to comply with the spirit of the law and the intent of its authors. The fundamental reason for the law is to protect the economic interests of the creators of the copyrighted material, and this is a concept that any teaching professional should be able to grasp. Education, however, is essential, and it is clear that many educators have made their way into the classroom without sufficient lessons on this law. Education need not be a burden as the essence of the law, as it pertains to educators, can be summed up in the fair use provisions that were placed in section 107 of the law to allow "fair use" of copyrighted work for purposes such as criticism, comment, news reporting, teaching, scholarship, or research.¹⁰ Fair use of a work will result in little or no profit for the user and insignificant harm to the creator. This section provides four criteria that define how to apply fair use for classroom use. These criteria date back to a federal court case from 1841 are stated as follows¹¹:

- The use must be of a nonprofit educational nature.
- The nature of the copyrighted work must be considered.
Scholarly work is expected to be used for educational or research purposes while commercial work is not.
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole must be considered. The less you use, the more likely it is to be fair use. If you use a small

¹⁰ United States Code, title 17, Public Law 94-553, 90 Stat. 2541, Section 107.

¹¹ Folsom v Marsh, 9F. Cas. 342 (C.C.D. Mass. 1841) (No. 4, 901).

part that represents the essence of the work, however, you may still have fair use problems.

- **The effect of the use on the potential market for or value of the copyrighted work should be insignificant.**

In addition to the four criteria that may seem a bit vague, three fair use tests were put forward by the House Judiciary Committee.¹²

- **Brevity:** This limits you to 250 words for poems, 2500 words or 10 percent for articles or stories.
- **Spontaneity:** For use to spontaneous you must not have had enough time to acquire permission in advance of the use. This criterion is designed to capture the "teachable moment" when something is needed for the classroom immediately.
- **Cumulative effect:** The combination of small uses could harm the potential market in some cases.¹³

Another important part of the law that educators must understand is found in section 110 and is known as the Face-To-Face Exemption. As long as one has a lawfully made copy of a work, one can use it as part of systematic instruction as long as the presenter is engaged in a face-to-face not for profit teaching activity. If each of these criteria are not met, then you are engaged in a public performance of the work which would require permission or payment to the copyright holder. This applies to works such as videos that are often used in whole or in part as part of modern instructional activities.

With a firm understanding of the fair use and face-to-face exemptions, educators are well on their way to a sufficiently full understanding of the law.

¹² U.S. Congress, House Judiciary Committee. Report No. 94-1476 (94th Congress, 2nd Session). p 68.

¹³ House Report No. 94-1476, *ibid.*, p.69

All that remains is to check a set of guidelines for the details on use of specific materials.

To further support my claim that it is reasonable to expect teachers to fully understand the law, 92% of my survey sample agreed or strongly agreed with the statement as did all of the individuals I contacted from other districts. A quick look at the results of question #9 from my survey, however, indicates that there is a good deal of misunderstanding of the law among the teachers in my sample. I suspect this is typical of teachers nation wide. What is missing thus far in Binghamton and most other districts is the type of educational effort that allows the staff to understand the law well enough to avoid routinely breaking it. To help with this process, I have produced the following document that contains the correct answers for each part of question #9 along with explanations. I believe that anyone who carefully reads this document will run little risk of significantly damaging any copyright holder.

Copyright Questionnaire Answers November 1993

Here are the correct answers to the true/false questions on the copyright questionnaire that I gave to a number of staff members in the Binghamton City School District during the first week of November in 1993. Along with the correct answer and the original question, I have listed the percent correct for the sample of 51 people who responded and an explanation of the correct answer. I am providing this information to help improve the understanding of the copyright law. I am indebted to those of you who helped my research by completing the questionnaire. Thanks so much. - Doug Green -

- a. T 37% It is legal to make copies of a magazine article for use with your class if you lack sufficient time to request permission. (It is not unusual for a teacher to discover an article that pertains to current issues being discussed in class. The authors of the law allow for this type of copying, but you should be careful not to abuse the privilege.)
- b. T 61% It is legal for teachers to purchase a copy of Disney's Beauty and the Beast at a video store to show to their classes. (Videos such as this usually have a statement in front of the video indicating that it is for home use only. This means that they cannot be used for public performances. The fair use section of the copyright law, however, does allow for teachers to use a legally purchased copy of a video as long as it is used for face-to-face instruction. While almost any video can be worked into the instructional program in some classes, the connection between the teacher's instructional objectives and the video should be more than incidental. In the case of Beauty and the Beast, for example, the class should be studying the story as a piece of literature. Unless such a direct connection exists, it would appear that the video is being used for entertainment purposes which makes the showing a public performance and therefore illegal. When a program is released to the home video market, the distributor can anticipate sales and rentals in the tens of thousands of units or more and prices the video accordingly. The educational or non-theatrical marketplace is made up principally of schools and has a much smaller potential along with higher prices since the average audience is much larger.¹⁴ The higher price also usually includes public performance rights. For entertainment purposes, therefore, the safest thing to do is stick to videos borrowed from BOCES. If you want BOCES to purchase a title, you should let me know in writing, and I will forward your request to BOCES in care of the Education Communications Department.)
- c. F 85% It is legal to record any television program and show it to your class at any time in the future. (You may generally show videos taped off air during the 10-day period after the program is telecast. You may keep the video for up to 45 days for the purposes of previewing in order to make a decision about

¹⁴ A Viewer's Guide to Copyright Law: What Every School, College, and Public Library Should Know, A.I.M.E. 1987, p. 4.

purchasing the video. Any taping you do of nonbroadcast shows from premium channels or pay-per-view is illegal unless specific permission is obtained.¹⁵)

- d. F 67% It is legal to record any program on Public Broadcasting (WSKG in Binghamton, New York) and show it to your class at any time in the future. (Each PBS broadcast comes with its own rebroadcast rights that vary from never to unlimited. You need to check with the station. This is a task that the school library media staff should perform.)
- e. F 83% It is legal to copy articles for your class to take the place of a text book. (Substituting articles copied from various sources to take the place of a text book or anthology infringes on the rights of book publishers. You can use articles to supplement a text, however as long as you follow the copyright law as it applies to their use.)
- f. T 49% It is legal for a library to copy an article and send it to another library. (This is analogous to a student who makes a copy of an article from a journal for academic use. The only difference is that the copy is made at one library and sent to another.)
- g. T 26% It is legal to copy a piece of music in an emergency for a performance. (The authors of the copyright law appear to understand the principle that the show must go on. Music teachers should be careful that they do not abuse this privilege by considering all situations where they need copies of music to be emergencies.)
- h. T 73% If you intend to make multiple copies of excerpts of a work for a class, you may not generally copy more than 10% of the work. (For very short works the 10% rule may not apply, but this is generally where you need to draw the line when you are copying excerpts for a class.)
- i. T 35% It is legal to use an office copier to make copies of a commercial ditto master. (The intent of the publisher is to let you make as many copies as a single ditto master will produce as opposed to the unlimited number you can make if you use a Xerox-style copier. Your best bet is to avoid ditto masters altogether and purchase black line masters that do let you make an unlimited number of copies. You will also get much better quality copies.)
- j. T 52% It is legal to make a copy of a computer program to keep as a back up. (This is true even if the program is copy protected. Make sure that you do not lend the backup to a friend or use it on another system.)
- k. T 93% If you wish to use a program on a network so many computers can use it at the same time, you must have a network license. (This is true unless the program is in the public domain. There may be programs that will run on a network but do not have a network version of the license available. If this is the case you should contact the vendor and ask.)

¹⁵ Op. Cit. p. 5.

- l. F 73% Programs recorded off-air may be used for entertainment or rewards in school. (Schools have some special privileges regarding the use of programs recorded off-air, but the intent of the law makers was to grant these privileges to promote instruction and scholarly work and not to let educators use copywritten work for entertainment. Anyone who is showing videos that are not somehow related to part of their instructional program should either search for a connection between the videos they show and their instructional program, select videos that do relate to their program, or look for activities to take the place of the videos that do relate to instruction.)
- m. T 100% If a person is ordered to make illegal copies by a higher authority, they are still guilty of breaking the copyright law. (The person who makes the copy will be named in any law suit along with everyone else in the chain of command including the superintendent and the members of the school board. Since publishers seem to be more aggressive than ever in pursuing their rights, it makes less sense than ever for educators to flaunt the copyright laws.)

Are school district policies effective?

Most school policies are enshrined in large books that can be found in administrator's offices. Their size and the language used are barriers to understanding and wide spread familiarity with their contents. For a specific policy to be commonly understood and followed, a significant effort needs to be made by district administrators with the cooperation of the staff. I will use the example of our district's high school attendance policy to illustrate this point. Five years ago, the staff at the high school recognized that students were selectively attending classes. They felt as a group that the existing class attendance policy was in need of revision. A process was put into place that resulted in the adoption of a new policy. This process involved the entire staff and received a great deal of public attention at board of education meetings. Although the details of this policy were somewhat complex for an attendance policy, it was well understood by teachers and students. This policy is now under revision due to many complaints from parents, students, and some staff members. The process used to create the policy, however, was responsible for the fact that the policy was well understood and effectively followed. The fact that this policy is widely viewed to be ineffective should not detract from the success of the process.

The example of this attendance policy demonstrates that staff involvement in policy development is one way to promote understanding and to assure that the policy will be effectively implemented. Such involvement, however, may not be necessary in all situations. In the case of a copyright policy, widespread involvement may be desirable, but I believe that it is not necessary. Unlike an attendance policy where each school can devise its own

system, a copyright policy is tightly constrained by a federal law. A study of a number of policies from school districts in the United States reveals that for the most part, they all say the same thing.¹⁶ The main points usually look like this:

- District employees will adhere to the provisions of the United States Copyright Law. Ignorance is no excuse.
- The district will take steps to inform the staff of the provision of the law.
- Employees may be disciplined for willful infringement of the law.
- Legal protection will not be extended to employees who willfully violate the law.

In addition to a brief policy statement that contains these points, a good policy should have a set of guidelines that employees can refer to if they have any questions about what is legal. Since there is little latitude in the construction of a copyright policy, widespread involvement is hardly warranted. While it may serve to educate the people who are involved, the time spent may be more effectively used elsewhere while a small group polishes the copyright policy and guidelines. This process, however, leaves a heavy burden of education during the post adoption period which may be overlooked as more immediate problems are addressed in schools. This appears to be the case in Binghamton since the adoption of the copyright policy in November of 1992. The average percent correct for the 13 true-false questions on my survey was 62%. This is not much above the 50% you would expect if everyone took blind guesses at these questions. In the case of some questions, the percent correct

¹⁶ Policies from Binghamton, New York, Los Angeles, California, La Mesa, California, Carmel, Indiana, Owego, New York, and Suggestions for the development of a school copyright policy from the Association for Information Media and Equipment, Elkander, Iowa were consulted to verify this statement.

was well below chance indicating a broad misunderstanding. Teacher opinions reinforce this claim. Only 36% of the respondents think the district has done a good job of education. Further support for this thesis was provided during my interviews and by a major study of teachers and students in Alabama.¹⁷ This study, surveying a total of 1,349 subjects, found that copyright policies appear to have little effect since illegal behavior was not related to the existence of a copyright policy in the district. The study also showed that about half of the respondents did not even know if their district had a policy.

This leaves us with the notion that district copyright policies can be effective, but only if proper education is done. I believe that teachers as a group will be more inclined to follow a law they understand and will be more likely to play by the rules if they know the district will not defend them if they are caught willfully breaking the law.

¹⁷ Rice, Richard L., *Behavior, Opinions, and Perceptions of Alabama Public School Teachers and Principals Regarding the Unauthorized Copying and Use of Microcomputer Software*, ED 340 703, Nov. 91.

Teachers' opinions and practices

Prior to sending out this survey, it was my opinion that teachers commonly broke the copyright law even though they equated breaking this law to stealing. If teachers were law abiding citizens, they must have had some rationale for such behavior. Since teachers spend their entire careers working for the benefit of children, it seemed like the most common rationale would involve doing what was in the best interests of their students. With this in mind, I constructed the survey to allow respondents to agree or disagree with my hypotheses.

In regard to equating breaking the law with stealing, 56% agreed that this was the case. I am not sure what the other 44% think, but if they did not think that they were damaging the ability of others to make a living, in other words stealing, when they make illegal copies, it could be due to ignorance. As far as setting an example was concerned, 76% agreed that it was important to obey the law to set an example for their students while only 10% disagreed. My interviews uniformly supported these claims and also suggested that teachers break the law without thinking. This was supported by the fact that only 27% of my respondents always checked to see if material was protected by a copyright before they duplicated material.

When I asked if teachers routinely break the copyright law, a total of 65% of the respondents agreed while only 17% disagreed and none disagreed strongly. My interviews agreed for the most part although several felt that the word routine was a bit too strong. As far as rationale is concerned, 24 respondents said they knowingly broke the law only when it was good for kids while 5 others admitted to often breaking the law, and 16 said they never knowingly broke the law. It should be noted that only 45 of my 60 respondents

chose to select one of these three choices. Ten people supplied their own answers even though my survey did not suggest that one should do so if one were unsatisfied with the available choices. Three of these people wrote seldom, while each of the following responses were supplied by one person: depends on the circumstances, not enough choices, between 2 and 3, sometimes, almost never, and try not to. When I combined these choices with those that selected often and only when its good for kids, I found that 39 of 55 or 71% admitted to knowingly breaking the law on some occasions.

Although my sample is not rigorously random, I believe that this number is large enough to support the claim that teachers as a group commonly break the copyright law. I also believe that my data supports the notion that the most commonly used rationale for breaking the law is only when its good for kids.

The Alabama study of teacher practices and attitudes cited earlier further supports this claim.¹⁸ Another major finding of this study was that while a majority of respondents found unauthorized copying of computer software by educators and students unacceptable, many indicated that they have and probably will use unauthorized copies for school use in the future. My interviews uniformly supported the idea also and cite the "only good for kids" rationale along with ignorance as the main reasons.

Computer software appears to be the single most abused area. Many teachers have purchased computers, and they often copy school software for use on their own systems. Students also have been known to copy school software, and schools often purchase a single legal program and copy it around the building or district. One of my confidential interviews discussed this issue in detail. The person I interviewed is a computer director for a district of about

¹⁸ Rice, Richard L., Op. Cit.

10,000 students. When he first took the position several years ago, he suspected that the district had problems in this area. To protect himself, he had a copyright audit performed by an outside vendor. During the audit, the software on each district computer was compared to purchase orders to determine how many copies were legal. In this case, the auditors found 400 illegal copies of Microsoft Works that subsequently had to be purchased!

Summary and some final thoughts

After analysis of my survey along with my confidential interviews and a study of the research, I feel confident in the following conclusions:

- With proper education, it is fair to expect educators to fully understand the current copyright laws.
- School district copyright policies are ineffective unless the district makes a significant effort to educate its staff.
- Most teachers equate breaking the copyright law with stealing.
- Most teachers feel that it is important to obey the copyright law in order to set a good example for their students.
- It is common for teachers to knowingly break the copyright law.
- When the teachers break the copyright law, the most common rationale they use is that they only do it because its good for kids.

In an earlier work, I established that some teachers misuse media by allowing the media they discover to control their curriculum. I also showed that some teachers use media to extend planning time.¹⁹ If you couple these practices with intentional abuse of the copyright law, you might suspect that I am devoting my career to painting a dim picture of teacher practices. I assure the reader that this is not my intention. After considerable reflection, however, I find that there is a potential for the findings in this paper to serve a useful purpose if they become better known and acted on.

¹⁹ Green, Douglas, W. *Media Meets the Curriculum: Uses, abuses, historic, perspective, and the potential of emerging technologies*, From Now On, June, 1993.

If teachers are more widely educated about the law and if districts adopt policies that indicate that they will not offer legal protections to teachers who willingly break the law, I believe that teacher abuse of copyrights will significantly decrease. This will serve several purposes. Initially, copyright holders will suffer less damage at the hands of educators. This may not significantly increase total revenues to the holders of copyrights for educational materials since educational spending on instructional materials tends to be inelastic. If teachers no longer consider illegal copying as a means of gaining access to instructional materials, however, they might be more selective when they purchase material. This should divert spending towards items that are considered to be of highest quality and could result in a gradual improvement of the quality of media and materials available for educators to purchase.

By following the copyright law, educators as a group will also improve their image that is otherwise rather untarnished. Heightened respect for educators can also serve to increase the respect that education in general has in our society. As the results of the true-false questions on my survey show, some teachers do not fully understand the rights that the fair-use provisions of the law give them. If more teachers understood these provisions, they might be able to make better use of these rights. Finally, if the law is understood and enforced, there would be less use of media for entertainment in the classroom. By requiring teachers to only use media that is tightly related to their curriculum, one would expect better results. While these claims may seem grand, I am convinced that real benefits would result if our educational system did a better job obeying the one law that is now commonly abused.

Appendix

Detailed results of copyright survey